84-692

No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM 1984

GERALD S. HAWKINS,
Petitioner,

v.

ALEX. BROWN & SONS
and
JOHN P. ROSSI,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

GERALD S. HAWKINS
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PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS PRESENTED

1. Did the District of Columbia court unconstitutionally deny petitioner's jury trial demand?

2. Did the D.C. court rule in conflict with seventeen controlling decisions of the United States Supreme Court?

3. Is the District of Columbia Superior Court's Rule 101(a)(2) repugnant to the Constitution, harming *pro se* litigants such as the petitioner in the prosecution of their case?

4. Did the D.C. court conflict with the intent of Congress under the Uniform Commercial Code?

5. Did the D.C. Court wrongly venture into Constitutional law in validating a Massachusetts equity proceeding, lawfully estopped jurisdictionally on personal and subject-matter grounds in Massachusetts?

6. Were the petitioner's Constitutional rights, privileges or immunities abridged substantially in his right to due process of law, or his right to equal protection of the laws?

7. Did the D.C. court arbitrarily or capriciously deny full faith and credit to the records and acts of the state of Colorado?

A LIST OF PARTIES

Plaintiff—Appellant—Petitioner:

Gerald S. Hawkins, British-born U.S. citizen, resident of the District of Columbia, author, astronomer, educator and employee of the Federal Government.

Defendants—Appellees—designated respondents:

Certain employees and general partners of a stockbroker firm, Alex. Brown & Sons who appeared by order of the District of Columbia Superior Court:

John P. Rossi, Alexander Brown Griswold, Benjamin H. Griswold, III, F. Barton Harvey, Jr., Joseph J. Turner, Norman Farquhar, James E. Holmes, Jr., W. James Price, S. Bonsal White, Jr., R. Gerard Willse, Jr., Charles S. Garland, Jr., Robert G. Merrick, Jr., William S. Jeffries, Frederick H. Steiwer, John G. Kovach, George W. Seger, James T. Cavanaugh, III, Ralph A. Cusick, Jr., Clarence Z. Wurts, John C. Pohlhaus, Benjamin H. Griswold, IV, David J. Callard, Truman T. Seamans, Edward K. Dunn, Jr., Richard F. Mulligan, Daniel Baker, Frederic M. Bryant, III, Jack S. Griswold, Joseph R. Hardiman, Donald B. Hebb, Jr., E. Robert Kent, Jr., Forrester A. Clark, Robert L. Clark, J. Dorsey Brown, III, Alvin B. Krongard, Clinton P. Stephens, James B. Stradtner and Alexander Brown Griswold and Benjamin H. Griswold, III, Trustees.

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS, AND, IN THE ALTERNATIVE, FOR A DIRECT APPEAL

Gerald S. Hawkins petitions for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals in this case, and in the alternative, a direct appeal on the repugnancy question (No. 3).

The petitioner, *pro se* through lack of adequate funds, requests the assistance of counsel.

OPINIONS BELOW

The unsigned, Memorandum Opinion of the District of Columbia Court of Appeals is reprinted in the Appendix. The opinion of the trial court was given orally and is summarized in the Appendix.

JURISDICTION

The judgment of the D.C. court of appeals was entered on August 23, 1984. A timely motion for rehearing was denied on September 14, 1984. Motions for Per Curiam Opinion and En Banc consideration were not granted. The jurisdiction of this Court is invoked under Article III of the Constitution, and under 28 U.S.C. 1257(2) and (3). Direct appeal is invoked on repugnancy to the Constitution under 28 U.S.C. 1257(2).

STATUTORY PROVISIONS INVOLVED

The relevant portions of the Uniform Commercial Code given verbatim in the Appendix (D.C. Code 28:8, 1973 and amendments), the law of appeal due process given verbatim in the Appendix (D.C. Code 11-705b, 1973 and amendments). and Superior Court Rule 101(a)(2) which states verbatim:

> Nothing in this rule shall be construed to prevent any natural person from prosecuting or defending any action in his own behalf if he is without counsel.

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant portions of the U.S. Constitution, Article IV, Amendment V, Amendment VII, and Amendment XIV. (Appendix F.)

STATEMENT

The injustice that happened to the petitioner could happen, despite the guarantees of the Constitution, to other citizens who have joint accounts in the District of Columbia or the 50 States.

Joe Doe and Mary Doe have their plans for a house, a car or a college fund for Joe Doe, Jr. Over the years, Joe Doe deposits and withdraws, and the computer prints out how many certificates he has purchased at the end of each month. What happens if a new stockbroker comes along and takes the account without Joe Doe's permission? Joe protests, and asks for the certificates to pay his son's tuition bill. Suppose the bank, the mutual fund or the stockbroker telephones Mary and says: "We believe Joe is going to make off with the money. Write us a letter, and we will freeze the account." Some people would say to the person calling: "You must be out of your mind!" But Mary might naturally think that the bank, mutual fund or stockbroker knew more than she did, and, before speaking with Joe, she might write the letter.

Joe has been slandered. The account has been frozen. The tuition goes unpaid, and Joe Doe, Jr. must fend for himself. But the account is cold on the outside only. On the inside, the managers have captured the money. It is hot; they can use it as they will. For them, a year frozen is a year gained. For the Doe family, a year frozen is a year lost. Mary is now suspicious of Joe, Joe becomes suspicious of Mary, and Junior, let down on his college tuition, is suspicious of both. A triangle of trouble has been created. The sleeping justice of the Constitution has been called upon. If the problem cannot be resolved in the law courts of the several states, then it becomes a concern of the U.S. Supreme Court

as the guardian of justice. Due process and property rights are ultimate Federal questions.

I, the petitioner, Gerald S. Hawkins, lost $50,000 plus interest—my life's savings—in a computer transfer. At trial for damages, the Judge refused to let me give the facts to a jury. I asked the court of appeals again for my right to a jury trial, but the court again denied it. Instead, the appeals court took it upon itself to try the facts—again without a jury, again without testimony, again without cross-examination, and with one of the Judges absent from the hearing. Not one of the three appeals court Judges signed his name to the opinion. The presiding Judge told me that the missing Judge would listen to the court's tape recording of the hearing. When I asked to have an official transcript made of the tape, my request went unanswered.

For more than ten years I bought shares of stock in a joint account. I paid the checks, I was sole agent, and my British-born, then wife was named as owner on survival. She is now remarried as Dorothy (Hawkins) Patten. Mr. John P. Rossi accepted my checks and took my orders for the firm, H. C. Wainwright & Co. of Boston, Massachusetts. With savings of my book royalties from the Book-of-the-Month-Club selection *Stonehenge Decoded,* the account grew to $50,000 over the years.

The problem started in 1977, when Alex. Brown & Sons of Baltimore, Maryland, wanted to expand their stockbroker business by taking over the customers of Wainwright. They wrote to me to ask permission to take the account in August, 1977. I wrote back on August 29, 1977, and refused, saying:

> Please be notified that agreement, acquiescence or permission is *not* given for the transfer of account 31785.

As I wrote in the pleadings, I didn't want to deal with Alex. Brown, because there had been some sort of trouble with the firm and the New York Stock Exchange in 1976, as reported in the *Wall Street Journal*. Also, they wanted me to sign a new agreement, full of fine print, which was not the same as the old one at Wainwright.

But Alex. Brown went ahead with their plan. On or about September 27, 1977, they transferred the account from Wainwright. They did it by computer, somewhere in New York or Baltimore. Two weeks later I received a statement. When I complained and asked to have the certificates sent to me, Mr. Robert Lee Clark, defendant and partner of both firms, said he couldn't do it, because my name had been taken off the certificates in the transfer. He agreed to send me unregistered certificates, and Mr. Rossi, also a defendant, accepted my order to deliver these to my home in Washington, D.C., on December 2, 1977.

I had come to live in Washington, D.C. in June 1975, when I became employed as the Science Advisor of the United States Information Agency. The Agency had issued travel orders for Dorothy Hawkins (Patten) to join me, but she was reluctant to move from the Boston area, because she did not like Washington, D.C. My daughter Lisette entered Cornell University, Ithaca, New York, in September 1977.

Mr. Clark now made a double move—he asked me to obtain my then wife's signature, and he telephoned her to tell her slanderously, and without evidence,

that I was going to sell the certificates and keep the money for myself.

I filed a complaint for wrongful transfer in the D.C. court on July 10, 1981, and forty general partners were ordered to be named as defendants for Alex. Brown. I demanded a jury trial. Judge Tim Murphy held a trial on November 4, 1983. I outlined my evidence and presented my claim. My witnesses were all present in the court room, ready to testify, but they were never called. A jury was never convened. The transcript of the trial reads as follows:

> MR. HAWKINS: Mrs. Hawkins's testimony which we have in a deposition here, will say I always managed the joint account . . . my long-range plan was to fund my daughter through college . . .
>
> Then I wonder about the motives of Alex. Brown . . . they said, okay, make it simple, get your wife to sign this document . . . So I sent it to her, but I knew she wasn't going to sign. Why? Because Alex. Brown had called her on December 27, 1977, and, as she says in her deposition here, told her that I was going to sell the bonds and use the money for myself . . .
>
> They terminated the account with no reason whatsoever. They wouldn't audit it . . . And even when this so-called attachment took place, your Honor, they never informed me."

Dorothy Hawkins (Patten) was remarried on December 26, 1982, having been divorced, at her request, by Decree of the Dominican Republic on January 29, 1979. However, she obtained a second divorce in Massachusetts in January 1981. Before that, on September 25, 1979, Alex. Brown had secretly surrendered the

certificates by Trustee attachment to a court in Massachusetts, and that court, without delivering a summons, decreed that the certificates belonged to Dorothy Hawkins (Patten).

Alex. Brown handed Judge Murphy in the juryless trial in D.C. the Massachusetts fact sheet and decree. The material was attached as an exhibit to a motion for summary judgment. I objected in my opposition, on the grounds that Massachusetts had no authority in D.C. I was ready to prove to the jury that I was divorced and subsequently married to Julia M. Dobson in the state of Colorado a full year *before* that Massachusetts decree, and I was a tax-paying, citizen of the District of Columbia. But Judge Murphy blocked my evidence from the jury. He never called a jury, saying, hurriedly:

> THE COURT: This court is not, nor will the jury be permitted to go behind the Massachusetts Decree. I say that up front so we'll just save time on that issue."

What was the rush? Did the court have some targeted result in mind? Previously, on April 15, 1982, Judge Murphy had rejected t e same or similar motion from Alex. Brown. He did it because there were disputed facts that needed to go to a jury. The facts hadn't changed between 1982 and 1983, so why did Judge Murphy reverse himself? Why did he say I had no actual damages? My damages were properly listed and totalled $295,905. Only a jury could determine whether the figure was too high or too low, but it couldn't be a flat "nothing," because Judge Murphy agreed I had a case, saying: "The court is satisfied there's a prima facie on (the) allegation of conversion."

Prima facie conversion—a justified suspicion of a white-collar theft—surely those words were strong enough to require a jury to weigh the evidence and render its verdict. Certainly I could prove a loss, and Lisette's college bill was unpaid.

In his statements at trial, Judge Murphy went far beyond the complaint against the stockbrokers. He brought in my wife, Julia. As an innocent bystander, and a lawful citizen of D.C., her marriage to me was ruled invalid—at least in those 61 square miles of land and 6 of water which make up the nation's capital. It was part of the court's "up front" ruling.

At Judge Murphy's trial, and throughout the two years of litigation, Alex. Brown chose to use a Maryland attorney in D.C.'s court. This went against Superior Court Rule 101, which is there to protect the integrity of the legal process in the District of Columbia. An attorney who is trained or practices in another state must have a member of the D.C. bar sign all pleadings and attend at trial; otherwise mistakes can be made, and justice can miscarry. Ms. Deborah E. Jennings, Alex. Brown's attorney, admitted at the appeal hearing that she "didn't have a copy of the D.C. court rules available in the office." As a result there were many unsigned pleadings, errors and illegal appearances in court. I had complained to Judge Joseph M. Hannon earlier at the pre-trial hearing in July 1982, and again in a memorandum in the record preserving my position on appeal in these violations of the rules, and again in my opposition to summary judgment before Judge Murphy.

None of the 40 partners ordered as defendants showed up for Judge Murphy's trial; neither did John P. Rossi. By law, a Maryland attorney standing alone in the D.C. court is unauthorized, and legally is no attorney at all, and so my claim for $295,905 in damages was totally uncontested. I moved for a default judgment, since that was my legal right. Judge Murphy refused to grant it to me on the grounds that I was representing myself, *pro se.* He said he denied the motion "in view of the fact that the plaintiff is appearing *pro se.*" Before I had time to object to what he was doing and ask for a new trial, he denied a new trial as well—another "up front" decision. He threw out the rule book, because I was representing myself!

It is commonly said that a *pro se* cannot win in the District of Columbia. I was representing myself, not by choice, but through circumstance. With my savings gone, I could not afford to pay for adequate counsel. (Fee estimates had ranged from $50,000 to $75,000—more than the value of the certificates.) In D.C. it is not that the man who represents himself has a fool for a client—no, a man who represents himself in D.C. is made unequal by the wording of Rule 101:

> Nothing in *this rule* shall be construed to prevent a natural person from prosecuting or defending his action in his own behalf if he is without counsel.

The catch is in the words *this rule.* Only 101 protects a *pro se.* There are more than 80 other rules, each and every one of which can be construed against a person acting in his own behalf. To be fair the

statute should say "these rules." No person can win with the rules turned against him!

Judge Murphy's order of November 29, 1983 (see Appendix) is an example of twisting the rules against a person who fights for his own rights. A motion for default judgment is well recognized as a quick way to end a legal fight, dispensing justice efficiently, and saving the court's time (Superior Court Rules 12, 12-I, and 55). Defendants who do not show up in court on the day of trial when ordered to do so know that "default" is the penalty they must pay. I filed a motion for default judgment on November 10, 1983, but Judge Murphy shielded Alex. Brown. He construed the motion into something it never was. He took it to be a "Motion for Judgment Notwithstanding the Verdict." Then he proceeded to deny that motion! My default motion, properly filed against Alex. Brown, was rendered harmless. The motion rules were turned against me.

The appeals court took up the cudgel where the lower court left off. It waived the rules of unauthorized practice for the Maryland attorney. It denied my right to a default judgment by deeming that there was no violation of Rule 101. The appeals court construed against me the very rule which declares: "*Nothing in this rule* shall be construed to prevent a natural person from prosecuting, etc. . . ."

In the D.C. court of appeals a *pro se* is by custom not heard by the regular panel prescribed by rule. Almost invariably, his appeal is looked at first by a single Judge, or maybe a clerk, and is relegated to a separate "summary calendar." There it is marked for all to see as one in which, to use the words of the

court, "oral argument is deemed neither helpful to the court, nor essential to fair consideration." The *pro se* is compelled to petition even for the right to be heard, which may or may not be granted. If and when he stands before the three Judges (who are selected after the decision to segregate has been made) he is already a marked man. He is neither "helpful" nor "essential" for the court's pleasure.

Recent statistics in the District of Columbia are as follows:

1984	Number of *pro se* cases put on the Summary Calendar	Number of *pro se* cases put on the Regular Calendar
July-August	13	0
September	7	0
October	14	0

Attorneys on the regular calendar are given a full 30 minutes to speak, but on the summary calendar a person is strictly limited to 15 minutes by an electronic timer.

On the average, more than 95 appeals in every 100 are denied in D.C. Is the lower court so jurisdictionally perfect, or does the appeals court give rubber-stamp approval?

My case, already pre-judged as neither helpful nor essential, was relegated to a special session of the court in which I was the only appellant. At the hearing, the Maryland attorney in question openly admitted that she was, indeed, not a member of the D.C. bar at Judge Murphy's trial. She admitted that she had not called on one of her 35 D.C. attorney

colleagues to help her at trial because she "wanted to save expense for Alex. Brown."

One of the three Judges was absent from the hearing, and the court told me he would listen to a tape recording later on. When I asked for a transcript of that tape, containing as it did the clear admission of default by the Maryland attorney, the appeals court did not grant permission to transcribe.

The D.C. court of appeals delivered its memorandum opinion on August 9, 1984 (see Appendix). In so doing it declined to follow a total of 17 controlling decisions of the U.S. Supreme Court, and 2 binding decisions of the U.S. court of appeals. These 19 opinions in conflict are listed and cited on pages iii and iv.

None of the three Judges signed the opinion, which dealt with only 2 of the 13 counts in my complaint, and recognized none of the facts in dispute. On count 3, "wrongful transfer," the court said it was not wrongful. The reason was because I was not damaged in that split second in September 1977 when deep down in the computer my account flipped from Wainwright to Alex. Brown. On count 4, "failure to obey my order to close the account and deliver the certificates," the court said: "Alex. Brown committed no legally cognizable wrong . . . because there is no record evidence that Hawkins had the right to sole possession of the assets."

I moved the appeals court for a rehearing, pointing out once again that I was entitled to a day in court in front of a jury. I said:

> This court has ruled that the defendants did no wrong in the alleged wrongful transfer (D.C. 28:8-315). Faced with this narrow instruction to

> the jury, appellant, in his concluding remarks at trial would have said: "And so, on that fateful day in September 1977, Alex. Brown & Sons was an honorable man—the defendants, they were all honorable men."
>
> However, this (D.C. appeals) court has rightfully identified a material issue in what happened in the aftermath. The torts arose proximate from that transfer, which changed a normal business practice, and torpedoed a European-style marriage. As Shakespeare's Mark Anthony said of Julius Caesar's fateful transfer—"The evil that men do lives after them." Mark Anthony persuaded the citizens of Rome. Could the appellant have persuaded the citizens of Washingfon D.C.?—this court cannot tell, because the jury was never convened. His right to speak on this issue was denied.

A D.C. court, by its own law, is supposed to look at the facts from the side of the appellant—at least if that appellant has an attorney. When it looks at the record, the appeals court must be like a "reasonable juror, acting reasonably." (*Phenix-Georgetown* v. *Tompkins,* DCCA 1984, No. 83-599.) The appeals court must construe the evidence "in a light most favorable to the appellant."

No reasonable juror could accept Alex. Brown's excuse for refusing to deliver the certificates. Alex. Brown said my order to John Rossi was a "demand for sole possession," but my signed statement in the record at trial is to the opposite:

> Gerald Hawkins managed the assets as sole agent and at all times informed the other principal, and, until December 27, 1977, enjoyed her trust in him as agent. The joint assets were for Gerald Haw-

kins's obligations as head of the household, including his promise to his daughter Lisette to fund her through college.

The appeals court was persuaded by a so-called affidavit of defendant Robert L. Clark. But that document is objected to in the record as inadmissible evidence, because it is not dated as to the year. As for the affidavit's claim that Mrs. Hawkins expressly directed that funds not be disbursed to me, how "express" was her direction, how free from undue influence was her act? Remember, on December 27, 1977, the very day she wrote the letter, she had just been told by Mr. Clark that I was going to keep the money for myself. While I was living in Washington and working for Uncle Sam, Mr. Clark was talking to her behind my back in Massachusetts.

If I could have cross-examined Mr. Clark in the witness box, the jury would have had their suspicions aroused. Were those stockbrokers using Dorothy Hawkins (Patten) to cover up what they had done?—they had taken the account without permission. Were they setting me up as an example of what they do to a citizen of the District of Columbia who refuses to go along with a take-over? Were they trying to force me to sign their new account agreement, which was carefully worded to get them off the hook?

The appeals court said there was an "absence of a contrary showing by Mr. Hawkins." No reasonable jury could accept that conclusion. Even Judge Murphy as far back as 1982 found there were "material issues of fact" (See Appendix). There were disputed facts at Judge Murphy's trial on November 4, 1983, as he himself conceded:

> MR. HAWKINS: Well, the fact of whether it was normal (business practice) for them to proceed that way is disputed.
>
> THE COURT (Judge Murphy): Yes, that's what I alluded to earlier. Okay.

I was cross-examined by two Judges at the appeals hearing, but though required by law to hear the appeal, the third Judge was absent (D.C. Code 11-705b, 1973). Is judgment-by-tape-recorder to be upheld as proper due process in D.C.? Was it a good, clear, un-edited tape? We shall never know. The court did not permit a transcript to be made.

What about the so-called "facts" brought down from Massachusetts? Alex. Brown showed them as an exhibit at trial. There was no trial in Massachusetts where witnesses could be cross-examined, and there was no jury. In D.C., surely members of a jury would want to hear their fellow citizen's side of the story before making up their minds. But Judge Murphy accepted the exhibit without question. So far as he was concerned it was "detailed, carefully drafted, and on the face, entitled to full faith and credit." I pointed out to the appeals court that even a forgery can be detailed and carefully drafted, but the two sitting Judges and the tape recorder accepted the exhibit nevertheless.

On its face, the exhibit was suspect to the point of being absurd. Massachusetts, the Thanksgiving state, said it had jurisdiction over me because I left on "Thanksgiving Day, November 27, 1977." That was a Sunday! I am a British-born, naturalized American citizen of 20-years standing, art am well-acquainted with our national holiday. I know it is always on the

fourth Thursday in November, and my fellow jurors would have known that too. A moment's check with the calendar would have proved the year to be 1975 (the year I came to D.C.), not 1977, and clearly I was by the calendar jurisdictionally clear of Massachusetts.

The Massachusetts exhibit, on its face, went on to say the Dominican divorce was invalid, because Dorothy Hawkins (Patten) was not notified in advance. In addition to proof of notification standing in the record of this case, under oath, as a deposition witness, Dorothy (Hawkins) Patten said:

> QUESTION: Were you notified of any divorce being pursued by your husband out of the country before it was pursued?
>
> ANSWER: I received a document in the mail and immediately took it to my attorney McGrath and Kane in Boston.

In divorce, Massachusetts proceeds under the old English laws of Equity. If there is no marriage to bring into the court room, the Judge has no power to grant a divorce. There is no subject matter for his jurisdiction. I was divorced, I was a D.C. citizen, and legal exception had been properly filed by me in Massachusetts under its Civil Rule 11b.

I challenged these Massachusetts defects at Judge Murphy's trial, but he over-ruled my objections. I demanded the right to prove my D.C. citizenship to the jury, to prove my Colorado marriage, and to rebut the false facts brought down from Massachusetts with witnesses and documents, but my rights were denied. A jury was never convened.

Judge Murphy gave D.C.'s full faith and credit to Massachusetts, but denied it to Colorado. Yet the ma-

terial from sister state Colorado was, by Judge Murphy's standards, equally detailed and equally carefully drafted. What is more, it did not have obvious defects like Thanksgiving Day supposedly falling on a Sunday.

The D.C. appeals court, with two Judges and a tape recorder, upheld Judge Murphy's action with its final decision. Justice, therefore, has now moved her powers to the highest Court of the land. I pray to the United States Supreme Court to intervene and assure me of that fair trial which is my right, —a Constitutional right that I share with all citizens of the United States. I have no less a right because I am an American by choice, and not by birth.

PERFECTION OF THE FEDERAL QUESTIONS

On July 10, 1981, the jury trial demand was made and paid for.

On November 4, 1983, the jury trial was denied.

On November 29, 1983, the demand for a jury trial was again denied.

On August 9, 1984, petitioner's timely appeal for a new trial, by jury, was denied, and his timely motion for rehearing was denied on September 14, 1984.

Petitioner objected to violations of Rule 101 at the pre-trial hearing on July 2, 1982, in a Memorandum filed on January 17, 1983, in his opposition at trial filed on October 28, 1983, and by motion filed on November 10, 1983.

Petitioner objected to the admission of the Massachusetts exhibit in his opposition filed on October 28,

1983, and orally at trial on November 4, 1983. The court recognized the objection on admissibility, saying it would proceed with the matter as "not otherwise challenged."

All Federal questions in this petition were raised vigorously in appellant's Brief and Reply Brief, filed respectively on March 23, 1984 and May 10, 1984. The Federal questions were again listed in a motion for a Per Curiam Opinion, and this motion was filed on July 13, 1984.

On July 31, 1984, petitioner argued the Federal questions at the 2-Judge hearing. The repugnancy of Rule 101 was raised in the appellant's Brief and Reply and in the above motion for Per Curiam opinion.

None of the Federal questions were expressly addressed by the D.C. court of appeals, and they now rest blatently in that court's record as usurped Constitutional rights, as conflicts with the rulings of the Supreme Court, or as a validation of repugnancy.

REASONS FOR GRANTING THE PETITION

Ever since Congress passed the Judge's Bill in 1925, the Supreme Court in its discretion need not pay heed to a petition. As Chief Justice Charles Evans Hughes wrote in a letter to Senator Burton K. Wheeler in support of that 1925 Act:

> Review by the Supreme Court is in the interest of the law, its appropriate exposition and enforcement, not in the mere interests of the litigants.
>
> Very often I have voted to deny an application when I thought that the lower court's result was very wrong, said Justice W. J. Brennan, Jr.

Supreme Court Rule No. 19 states:

> A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

Clearly, in the words of Justice Brennan, the D.C. appeals court's result was very wrong. My petition to the Supreme Court is in what Chief Justice Hughes called "the interest of the law, its appropriate exposition and enforcement." It is the Constitutional way to protect those fundamental rights which were promised me when I became a U.S. citizen. There are four special and important reasons under the Supreme Court Rule 19, and I give them here.

Reason 1. Full Faith and Credit.

Since the granting of Home Rule, there has been a dramatic erosion in the protection of the citizens of the District of Columbia from decisions made in other states.

In 1971, D.C. gave full faith and credit only after the jurisdiction and evidence had been challenged, tried and tested with a D.C. jury. The court at that time followed the Constitution, Article IV. The District was in harmony with the Supreme Court, using the Federal Rules of Evidence for such foreign actions, which "the Congress may by general laws prescribe." (*Shanklin* v. *Bender*, DCCA 1971, 283 A 2d 651, and relying on *Williams* v. *N.C.*, 65 S Ct. 1092.) In 1971, the District of Columbia was defending citizens on their home territory, as the Constitution requires.

In 1972, the court altered the ground rules. Although a D.C. citizen still had the right to defend himself on

his home territory, from 1972 onward it would use the laws of the sister state at trial, not the laws of D.C. This was a serious inroad into the "privileges and immunities" of the Constitution, but, at least, the sister state could still be challenged in the D.C. courts. (*Varone* v. *Varone,* DCCA 1972, 296 A 2d 174.)

Now, in 1984, there is no immunity, no chance to defend oneself, no challenge permitted, no jury trial allowed. An Orwellian system is in place. Whatever the sister state puts forward as facts are accepted, no questions asked. As the memorandum opinion in this case decrees:

> We will accord a sister state's judgment full faith and credit as long as the state's jurisdictional standards accord with due process (See Appendix).

Clearly, anything that a state does will accord with that state's standards of due process. D.C. begs the question, raising the rights of other states to the highest heights and pushing the rights of the individual to the lowest depths. From now on, the District of Columbia will rubber-stamp anything that comes in from across the state line. In Judge Murphy's court this was done to save time for the court, but what will be saved for the citizens?—nothing. People come to live and work in the District from all those other states which stretch from the mountains to the prairie of this nation. When they become Washingtonians, are they not to be saved from arbitrary and capricious foreign judgments?

Congress has set up procedures for granting, or not granting, full faith and credit, and these procedures

are detailed (and carefully drafted), and embodied in the Federal Rules of Evidence. Judge Murphy declined to follow Congressionally established procedure. Why? Was it "in view of the fact that the plaintiff is appearing *pro se*?"

Not only has D.C. set up a process of picking and choosing among the states, giving full faith and credit to Massachusetts but denying it to sister state Colorado, but the District of Columbia substantially misapprehended the laws of Massachusetts. In this case there are errors of Constitutional law. If I am granted the assistance of counsel in the Supreme Court, he or she will prove this from the record.

As far back as the year 1816, Justice Joseph Story wrote:

> Judges of equal learning and integrity, in different states, might differently interpret a statute or a treaty of the United States, or even the Constitution itself . . . The public mischief that would attend such a state of things would be truly deplorable.

D.C. law is quite different from Massachusetts law, particularly on the interpretation of equity and the division of property. By shutting out my defense at trial, the District has done a public mischief, not only to me, but to my wife, Julia, and my daughter, Lisette. No citizen can now feel safe in the District of Columbia, because it lacks that guarantee of protection from stray shots fired across its border—a protection that is enjoyed by citizens in all the states.

The Supreme Court has stepped in to protect this Constitutional right in similar situations in the other states (*Williams* v. *N.C.*, 325 U.S. 226, *German Sav.* v.

Dormitzer, 245 S Ct. 221, *Sutton* v. *Lieb,* 72 S Ct. 398, *Armstrong* v. *Armstrong,* 76 S Ct. 629), and it should do so equally in the Home-Rule state of the District of Columbia.

Reason 2. Due Process.

Jurisdictional standards vary in the several states. A state is sovereign within its boundaries. What is due process in one state may not be due process in another. However, as the upholder of the Constitution, the Supreme Court has set one clear standard for all the states to follow—due process in the United States requires a fair trial. This above all is the one pillar on which American justice stands.

The citizens of D.C., already with less than equal representation in Congress, need a more watchful control of their Home-Rule courts. It is not that I, a "mere litigant," stand to lose my life's savings in a dispute with a Maryland stockbroker. It is not that my marriage has been ruled invalid within the boundaries of the city in which I live. It is not that I am uncompensated for the loss of a daughter's affection. No, the issue is greater. It involves the right of the citizens of the nation's capital to a fair trial by jury, to Federal due process, and to the equal protection of the laws.

In 1970, at the outset of Home Rule, the District of Columbia ignored the 14th amendment, granting jury trials to some, but not to others. The Supreme Court corrected this in *Pernall* v. *Southall Realty,* 94 S Ct. 1723, when it ruled the District to be a quasi-state, obligated to uphold the rights of the 5th, 7th and 14th amendments. The Supreme Court said:

> A law suit cannot be resolved with due process of law unless both parties have a fair opportunity to present their cases . . . In suits at common law, where the value in controversy shall exceed $20, the right to a trial by jury shall be preserved in courts established by Congress in the District of Columbia.

The framers of the Constitution were opposed to oppression. A head with a mouth to give orders, but no eyes to see the litigant nor ears to hear his pleadings is something that will not be tolerated in the United States. Its citizens have a right to be heard. No Judge has a right to shut a jury out of the court room on the presumption that those jurors would not award damages, or on the presumption that they would not be swayed by a set of facts put forward by a person who is representing himself (*Haines* v. *Kerner*, 92 S Ct. 59).

Even if one or two issues are disposed of summarily, the rest must go to trial. The court considered only 2 out of a total of 13 counts. In addition, Judge Joseph M. Hannon added 7 more at the pre-trial hearing. Then there was the issue of status—Alex. Brown's "trusteeship." How could the firm be my trustee when it took my certificates without permission? And my role as customer and agent—how could Alex. Brown ignore my established authority? It was I who sent the checks and gave all instructions to the stockbroker for the 10 years before the fateful take-over. Did Alex. Brown act with malice toward me? Was the phone call which slandered my reputation as a responsible manager outrageous? These were some of the questions which, by law, only a jury could answer (*Poller* v. *CBS*, 82 S Ct. 486). But a jury was never called.

I had no fair chance at trial, because there was no jury. If the Supreme Court does not ensure that fairness, then justice sleeps. My case against Alex. Brown lies stiffled. The true outcome will never be known.

I had no fair chance on appeal, because a Judge was missing. Equal protection of the law (D.C. Code 11-705b) requires 3 Judges at an appeal hearing. I had only 2. I was told by the presiding Judge that the court's tape recording would be played to the missing Judge. When I asked for a transcript of the tape, my request were unheeded.

Reason 3. The duty of the District of Columbia court.

The appeals court failed in its duty to see that justice was fairly done when it surrendered its powers to the "court" of Alex. Brown. Those stockbrokers accused me of stealing my daughter's tuition money, put me on trial, and found me guilty. The accusation is vigorously denied. I am an academic person, and a recognized author. No reasonable juror could believe that I, with such a character, would deny my daughter the money I saved for her education. On the contrary, it was Alex. Brown who denied her the tuition by freezing the account! At the appeals hearing, the 2 Judges (and the tape recorder) accepted Alex. Brown's story. The kangaroo court of those stockbrokers was upheld.

The New York Stock Exchange, the SEC (Securities and Exchange Commission), and the Public Commissioner's of Maryland and the District of Columbia all said that justice must be sought in the civil court. It was the duty of the court to weigh the facts of the dispute and pass judgment.

Stockbrokers have their own compliance departments where staff lawyers make the rules to protect

the firm. They freeze or deliver funds as they see fit. For example, one of the biggest firms in the U.S. has fine print on the back of each monthly statement which says: "You do however, have the absolute right to receive . . . any free credit balance to which you are entitled." But that is no *absolute* right! The compliance department decides whether or not a person is "entitled," and the staff lawyers make the rules.

There is no way to persuade a firm like Alex. Brown, when it decides to be vindictive, that you are entitled to receive the certificates, or even that you are you. They are unreasonable jurors, and unconstitutional Judges. When I visited defendant Ralph A. Cusick Jr. in his office, he wouldn't listen to me, he threw me out. When my wife, Julia, went to Alex. Brown's head office in Baltimore, they said with satisfaction: "That's the end of Gerald S. Hawkins!" When such a legal game is played, survival can only be had by entering the sanctuary of the courts.

But the District of Columbia handed the flame of justice to Alex. Brown's vigilantes. The court gave them, and other stockbrokers with them, a hunting ticket on joint accounts. The Supreme Court should uphold my right to a proper trial, otherwise it will be open season on all Joe Doe/Mary Doe accounts. Indeed, stockbroker power as wielded in their compliance departments now extends unrestrained to Joe Doe/Mary Smith accounts, and even to single-named, Joe Brown accounts.

Reason 4. Previous law.

The appeals court has wiped out a vast body of common law on Principal and Agent, which now no longer

applies to the handling of household investments, or a child's college fund. This action strikes at the heart of domestic budgeting, and financial planning.

Congress in H.R. 5338 on the Uniform Commercial Code said:

> The Uniform Commercial Code will be beneficial to the people of the District of Columbia because it will provide a comprehensive body of written law extending to matters which are not covered at present by District of Columbia judicial decisions.

The appeals court has placed an unreasonable interpretation on the words of Congress when it concluded that there must be immediate damage before a transfer could be legally wrongful. The Uniform Commercial Code has a clearly-worded law in D.C. Code 28:8-315, 1973:

> Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

The appeals court believes there can be no damage done during that split-second of time when the whirring computer does its thing. Congress surely would think otherwise. The law was written before computers existed, but what about the button-pushers—surely they are to be held liable. Alex. Brown and the forty tort-feasors took the money and stashed it away in their vault.

I lost $50,000 and more. I have a right to tell my story to the jury.

CONCLUSION

For the above facts and reasons a writ of certiorari should be granted, and the question of repugnancy should be included in the writ, or docketed as a direct appeal.

Respectfully submitted to the United States Supreme Court,

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APPENDIX

APPENDIX

This Appendix contains (A) the Memorandum Opinion and Judgment of the District of Columbia Court of Appeals, decided August 9, 1984, (B) an Order of the D.C. Superior Court denying a motion for Summary Judgment, (C) excerpts of an Opinion and Order of the D.C. Superior Court reversing the denial of a motion for Summary Judgment, and (D) an Order of the D.C. Superior Court denying a motion for a New Trial.

A.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 83-1455

[Filed Aug. 9, 1984, D.C. Ct. Appeals, . . . Clerk]

CA 10154-81

GERALD S. HAWKINS, *Appellant*

v.

ALEX. BROWN & SONS, et al., *Appellee*

Appeal from the Superior Court
of the District of Columbia

(Hon. Tim Murphy, Trial Judge)

(Argued July 31, 1984 Decided August 9, 1984)

Before NEBEKER and BELSON, *Associate Judges,* and YEAGLEY, *Associate Judge, Retired.*

MEMORANDUM OPINION AND JUDGMENT

Appellant Gerald Hawkins sued Alex. Brown & Sons, et al., for wrongful handling of an approximately $50,000 account that Hawkins held in joint tenancy with his former wife. The trial court granted summary judgment for Alex. Brown. We affirm.

Hawkins has two major claims against Alex. Brown. First, he argues that the funds were wrongfully transferred to Alex. Brown from H.C. Wainwright & Co. on September 27, 1977. On that date, H.C. Wainwright transferred its retail accounts to Alex. Brown. Hawkins argues that the transfer was wrongful because he did not authorize it. His argument fails as a matter of law. Hawkins

has not shown that any damages arose directly from the transfer; rather, the damages he alleges he suffered arose from Alex. Brown's subsequent failure to surrender the assets in the account to him.

Hawkins' second argument arises out of Alex. Brown's assertedly wrongful failure to give Hawkins the assets in the account. After Alex. Brown assumed responsibility for the account in September 1977, Hawkins demanded that Alex. Brown give him the assets. Between his first demand and September 25, 1979, Alex. Brown refused to relinquish the funds because the account was a joint account and Hawkins' wife had not concurred in his demand for sole possession of the funds. On September 25, 1979, the Probate and Family Court of the Commonwealth of Massachusetts attached the assets in connection with Hawkins' wife's suit for divorce. In January 1981 that court awarded the wife all possessory rights in the account.

Alex. Brown committed no legally cognizable wrong in failing to give Hawkins the funds in the account, because there is no record evidence that Hawkins had the right to sole possession of the assets. The affidavit of one of Alex. Brown's general partners shows that Alex. Brown required a written joint account agreement signed by both joint tenants in order for either tenant to direct transactions on his or her own. The affidavit states, and there is no evidence to the contrary, that Alex. Brown requested but never received the authorization. In fact, Mrs. Hawkins expressly directed that Alex. Brown not disburse funds to her husband. Thus, Mr. Hawkins never became entitled to receive the funds.

After Septemer 25, 1979, the situation became even clearer: on that date, the Massachusetts court attached the assets. Thereafter Alex. Brown had no power to transfer the assets to Mr. Hawkins. The Massachusetts court decision, which ultimately awarded sole ownership of the

assets to Mrs. Hawkins, is entitled to full faith and credit by this court. *Varone v. Varone,* 296 A.2d 174, 177-78 (D.C. 1972); *see Rosser v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 276 A.2d 234 (D.C. 1971).

There is no genuine issue of material fact. On the facts that the movant for summary judgment, Alex. Brown, set forth, and in the absence of a contradictory showing by Mr. Hawkins, it is clear that Alex. Brown is entitled to judgment as a matter of law. Hawkins had no legal right to that which he sought, so Alex. Brown's refusal to give it to him cannot have been wrongful. Under Super. Ct. Civ. R. 56(c) and our precedents, such as *Nader v. de Toledano,* 408 A.2d 31, 41-42 (D.C. 1979), *cert. denied,* 444 U.S. 1078 (1980), summary judgment was proper.[1] Accordingly, it is

ORDERED and ADJUDGED that the judgment on appeal be, and it hereby is, affirmed.

FOR THE COURT,
/s/ RICHARD B. HOFFMAN
Richard B. Hoffman
Acting Clerk of the Court

---

[1] Hawkins contends that the fact that Alex. Brown's attorney at the summary judgment hearing was not a member of the D.C. Bar entitled him to a default judgment. The trial judge who presided at the summary judgment hearing had previously accepted the appearance of the attorney. The trial judge had the authority to waive the requirement that a D.C. Bar member accompany the attorney to all proceedings. Super. Ct. Civ. R. 101(a)(3). In light of his previous acceptance of her appearance and of the failure of Hawkins to object at the summary judgment hearing, we deem the trial judge to have waived the requirement.

B.

DISTRICT OF COLUMBIA SUPERIOR COURT

Ordered that the defendants' Motion for Summary Judgment be and hereby is, denied, the Court finding that there are material issues of fact.

Judge Tim Murphy
April 15, 1982

C.

DISTRICT OF COLUMBIA SUPERIOR COURT

Excerpts from the trial without a jury with Judge Tim Murphy on the bench, on November 4, 1983.

1. The pleadings before Judge Murphy set out the controlling decisions of the Supreme Court. He said he had read the pleadings, but when he gave his opinion he ignored each and every controlling decision.

2. The pleadings before Judge Murphy contained my objections to the violation of the rules. I objected to Alex. Brown's papers not being signed (Rule 11), and to the Maryland lawyer practicing in the District of Columbia Court (Rule 101). Judge Murphy arrived late at trial, and was confused. He thought I was the defendant, he thought there was only one defendant (not 40), and he thought that the Maryland lawyer standing in the court room was an authorized, D.C. counsel:

> THE COURT: Okay. Sorry for the delay . . . I have to go back into the file, but I wanted both the defendant and counsel for the defendant—plaintiff and counsel for the defendant to narrow the issues as they saw them and add anything further they wish to say.

3. On the question of the Uniform Commercial Code, which Congress had expressly written to be "beneficial to

the people of the District of Columbia," on this question the court was entirely silent.

4. The pleading showed, and the defendants' admitted, that Massachusetts had proceeded in pure equity, despite the notice of legal estoppel that I had mailed from the District of Columbia. The Massachusetts case was a non-starter, because I was already divorced, remarried and a D.C. citizen before Alex. Brown gave the certificates to the Massachusetts court. I objected to the admissibility of the exhibits as evidence. Judge Murphy noted my objection, but went ahead and sided with the stockbrokers:

> THE COURT: Well, I'll say for the purpose of clarification that the Court accepts the jurisdiction of the Massachusetts Court as not otherwise challenged and the findings of facts and conclusions of law will be treated as matters not to be relitigated in this Court. . . . It's not the rightness or wrongness of it. But I've read the opinion, it appears to be detailed, carefully drafted, and on the face, entitled to full faith and credit and the Court so accords it.

5. On the question of my rights to jury trial and equal protection of the laws, both the lawyer from Maryland, and the District of Columbia Judge were of the same opinion. Both of them simply ignored my rights for their own convenience:

> THE COURT: This Court is not, nor will the jury be permitted to go behind the Massachusetts decree. I say that up front so we'll just save time on that issue . . .
>
> MS. JENNINGS: —going through a whole trial to determine whether or not you have the punitive damages claim seems inappropriate.
> THE COURT: Okay.

6. The pleadings before Judge Murphy contained Julia's and my marriage certificate. The official state seals showed

our marriage in Colorado, under Colorado laws. The official state seals showed my previous divorce upheld by Colorado. But Judge Murphy had one, clear, "up front" word for our marriage:

> THE COURT: . . . invalid . . .

7. I claimed items of specific damage, including the value of the certificates ($52,455), accrued interest from 1977 to 1982 ($18,450), and the loss of the purchasing power of the dollar over that period (47.8 per cent), but, in Judge Murphy's opinion, these losses were mere speculation:

> THE COURT: (T)here's no defined issue of damages that you don't have to speculate on or has any standard of measurement.

In Judge Murphy's opinion, Alex. Brown had done nothing more than borrow my money for 20 minutes!

> THE COURT: You know, if you drive my car around the block, forgetting that it might be stealing a car, but the notion that is very hard to prove, we all know there's wear and tear as a loss on a car but it's very hard to prove what the loss of my car for 20 minutes was because you used it without permission, aside from the criminal law.

8. When I said I handled the account as sole agent, the Judge didn't understand the legal meaning. (But Alex. Brown's lawyers knew very well what I meant, and the importance of my position as agent, because they were planning to dispute this when the jury entered the box!) Judge Murphy said:

> THE COURT: Maybe that's just a question of semantics. You used a different word than a lawyer might use.

9. In his conclusion, Judge Murphy applied the common law of conversion, but then expressed doubts about his opinion:

THE COURT: It strikes the Court that this is essentially a case sounding in the tort of conversion . . . not every wrongful interference with personal property of another is a conversion, but the Court is satisfied there's a prima facie on allegation of conversion here. The Court is also satisfied, based on the record before it and Mr. Hawkins's own statements, that he can make out no measure of damages other than that of the value of the property, and the value of the property was the value when it was seized or somehow taken control of by the Massachusetts Courts.

The law is that nominal damages on conversion are proper even if the property has no value . . .

This is a matter that you have the ability and skill to ultimately resolve on appeal, and I suggest that you ask the Court of Appeals to review the Court's decision in that regard . . .

The issue about the loss of affection of your child would be, in the Court's view, an element of punitive damages, not actual damages; however, the Court's ruling on the issue of punitive damages moots out the question of actual damages, but I can't find a case on it. But I would think that if you suffered the loss of affection of your child based on conduct that would constitute punitive damages, that would be clearly a recoverable item of proof.

So the Court grants the Motion (for Summary Judgment in favor of Alex. Brown & Sons), and if the Court of Appeals rules me wrong, well, I'll be happy to hear the case.

Thank you very much.

Judge Tim Murphy
November 4, 1983

D.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

This matter is before the Court on what is styled "Plaintiff's motion for default judgment." (The pleading, properly filed, was actually entitled 'Motion for Default Judgment on Behalf of the Plaintiff.') In view of the fact that plaintiff is appearing *pro se*, the Court views the motion as one for new trial and, in the alternative, for a judgment notwithstanding the verdict.

Having considered the motion and the points and authorities cited in support thereof it is hereby ordered, that plaintiff's motion be, and hereby is, denied.

Judge Tim Murphy
November 29, 1983

E.

D.C. Code 1973, 28:8-315(1) (Uniform Commercial Code.)

Any person against whom the transfer of a security is *wrongful for any reason*, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights *or have damages*.

D.C. Code 1973, 28:8-314(2) (Uniform Commercial Code.)

A transferor's duty to deliver a security under a contract of purchase *is not fulfilled until he places the security* in form to be negotiated by the purchaser *in the possession of the purchaser* or a person designated by him.

D.C. Code 1973, 11-705(b) (Due process on appeal.)

Cases and controversies shall be *heard* and determined by divisions of the court unless a hearing or a rehearing

before the court en banc is ordered. Each division of the court shall consist of *three judges.*

F.

U.S. CONSTITUTION

Article IV(1), (2)

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of *every other State.* And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be *proved, and the effect thereof.* The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Amendment V

(N)or deprived of life, liberty, or *property,* without due process of law.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the *right of trial by jury shall be preserved.*

Amendment XIV

(N)or shall any State deprive any person of life, liberty, or *property,* without due process of law, nor deny to any person within its jurisdiction the *equal protection of the laws.*